THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ACCU-SPEC ELECTRONIC SERVICES, INC.	:	
	:	
Plaintiff,	:	
	:	**C.A. NO.: 03-394 E**
v.	:	
	:	
CENTRAL TRANSPORT INTERNATIONAL, INC. and LOGISTICS PLUS, INC.	:	
	:	**ELECTRONICALLY FILED**
Defendants.	:	

MOTION FOR RECONSIDERATION AND/OR CLARIFICATION REGARDING CENTRAL TRANSPORT INTERNATIONAL, INC.'S MOTION IN LIMINE TO PRECLUDE EVIDENCE OF DAMAGES IN EXCESS OF THE TARIFF'S LIMITATION OF LIABILITY

Central Transport International, Inc., by and through its counsel Janssen & Keenan P.C. respectfully moves for reconsideration and/or clarification of the Court's ruling addressing Central Transport International's Motion in Limine to Preclude Evidence of Damages in Excess of the Tariff's Limitation of Liability, and in support thereof asserts the following:

On Wednesday, October 12, 2005, a hearing was conducted with respect to Central Transport International's Motion in Limine to Preclude Evidence of Damages in Excess of the Tariff's Limitation of Liability. The conference was to be conducted by telephone; however, both the attorneys for Logistics Plus, Inc. and Accu-Spec Electronic Services, Inc. appeared in person and counsel for Central Transport International, Inc. appeared by telephone. During argument with respect to this motion, and in Accu-Spec's opposition briefing, representations were made by counsel for Accu-Spec as to anticipated testimony with respect to facts related to the use of the demo machine which is the subject of this litigation. Plaintiff's opposition brief indicates that:

> The anticipated testimony is that there exists no record of the precise hours of such use, but the upper limit of use prior to sale would be twelve (12) hours. Twelve hours of controlled operation by the manufacturer of the equipment would not amount to one tenth of one per-cent (00.01%) of the equipment's useful life. Therefore, any "use" of the equipment prior to its sale to Accu-Spec is de minimis and does not constitute a "used" machine as defined by the Tariff.

Plaintiff's Opposition Brief at p. 2-3

During oral argument, counsel for defendant Central Transport International, Inc. indicated that anticipated testimony would reflect that the X-ray machine was sold for a discount of $15,000.00 due to its prior use, that it was displayed as a floor model for over six months and that it may have been transported multiple times to trade shows. All of this anticipated testimony, both as expressed from plaintiff's counsel and from counsel for Central Transport International, is not of record. The only evidence of record in this case with respect to the X-ray machine is one page from the deposition of Joseph Fisher attached hereto as Exhibit "A." This deposition testimony indicates that "In this case, this is a demo machine, so we shipped it from Fremont." (Deposition transcript of Joseph Fisher, p. 5, lines 23-24). During oral argument, the Court inquired as to whether or not Central Transport agreed that any amount of use, including twelve hours of use, would cause the X-ray machine to be considered used. Counsel for Central Transport agreed to this proposition and also argued that the anticipated testimony would reflect that the X-ray machine was discounted by $15,000.00 due to its use as a demo, and was on the display floor for over six months and may have been transported multiple times to trade shows.

After an approximately 15 minute recess, I was contacted by telephone by the Court with the other parties present and the Court dictated an Order, which seemed to reflect that there was some sort of stipulation with respect to the use of the X-ray machine. Counsel have not yet received the text of this Order. Central Transport International, Inc. has never stipulated as to the specific factors related to the use of the X-ray machine, nor has it stipulated as to the useful life of the X-ray machine. All facts presented by counsel during argument, except for Joseph Fisher's deposition, is not evidence of record and should not be relied upon by the Court in ruling on whether or not the X-ray machine was new or used. The only facts of record to the Court at this point, is the deposition testimony of Joseph Fisher. Reliance on any other fact would essentially convert counsel's anticipated evidence into record fact. It is not known if the machine at issue had been operated for 12 hours or 1,200 hours, as no such evidence has ever been produced in discovery.

To establish the nature of the use of the X-ray machine, it will be necessary for competent evidence to be presented of record at trial. Central Transport cannot stipulate to any facts with respect to the X-ray machine's use. Whether the machine was used, how long it was used, and its condition at time of transit are fact issues to be presented to and determined by the jury.

CONCLUSION

For the foregoing reasons, Central Transport International, Inc. respectfully requests this Court to clarify its earlier oral Order with respect to past use of the X-ray machine

Respectfully submitted,

JANSSEN & KEENAN P.C.

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Attorneys for Defendant
Central Transport International, Inc.

Dated: October 14, 2005

CERTIFICATE OF SERVICE

This is to certify that on this, the 14th day of October 2005, a copy of the foregoing Motion for Reconsideration Regarding Central Transport International, Inc.'s Motion in Limine to Preclude Evidence of Damages in Excess of the Tariff's Limitation of Liability was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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I hereby certify that on this, the 14th day of October 2005, a copy of the foregoing Motion for Reconsideration Regarding Central Transport International, Inc.'s Motion in Limine to Preclude Evidence of Damages in Excess of the Tariff's Limitation of Liability was served via electronic mail delivery, upon the following:

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